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**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Consider the  
Adoption of a General Order and Procedures  
to Implement the Digital Infrastructure and  
Video Competition Act of 2006.

R.06-10-005

**REPLY COMMENTS  
OF SUREWEST TELEVIDEO (U 6324 C)  
ON PROPOSED DECISION MAILED AUGUST 24, 2007**

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September 18, 2007

## **I. INTRODUCTION.**

Pursuant to Rule 14.3(d) of the Commission's Rules of Practice and Procedure, SureWest TeleVideo ("STV") provides the following reply comments on the Proposed Decision of Commissioner Chong mailed on August 24, 2007 ("PD"). STV received opening comments from the Division of Ratepayer Advocates ("DRA"), The Utility Reform Network ("TURN"), the California Community Technology Policy Group and Latino Issues Forum ("CCTPG/LIF"), the Greenlining Institute ("Greenlining"), a group of small telephone companies (the "Small LECs"), the California Cable and Telecommunications Association ("CCTA"), AT&T California ("AT&T"), and Verizon.

STV disagrees with those parties that assert the PD's treatment of standards for small video provider build-out requirements is appropriate. As discussed in STV's opening comments, the Digital Infrastructure and Video Competition Act of 2006 ("DIVCA") contemplates that small video providers will be subject to less rigorous standards than those applied to the likes of AT&T and Verizon. DIVCA adopted a modified build-out requirement for smaller providers as a matter of public policy.

With respect to any reporting requirements adopted by the Commission, STV urges the Commission to follow the law and to refrain from pursuing the extensive, pro-regulatory reporting requirements supported by groups representing consumer interests. STV points out that many of these parties, including TURN and DRA, participated in the legislative process, made these same arguments before the legislature, but were not persuasive. The Commission should not now reverse the outcome of the legislative process by adopting requirements that exceed the scope of DIVCA.

## II. SMALL VIDEO PROVIDERS SHOULD FACE LESS RIGOROUS BUILD-OUT STANDARDS.

Several parties comment approvingly of the PD's determination to apply the large video provider build-out standards to small video providers. *See, e.g.*, Greenlining Opening Comments, p. 2; CCTPG/LIF Opening Comments, p. 1; CCTA Opening Comments, p. 1. A common theme in support of this outcome is that the same build-out standards should apply to video providers regardless of their size. However, uniformity in regulation is completely at odds with DIVCA's approach to build-out. DIVCA explicitly treats large video providers and small video providers differently. If the Legislature had intended small video providers to be treated the same as large video providers, there would have been no reason to differentiate build-out standards depending upon whether a video provider serves more or less than 1,000,000 telephone subscribers. The opening comments of TURN, Greenlining, and DRA propose or support action that diverges from limitations placed upon the Commission's statutory authority with regard to video providers. The Legislature did not delegate authority to the Commission to change policy and intent with regard to smaller provider build-out requirements, but only delegated authority to determine an appropriate timeframe for **implementation** of the separate requirements for smaller providers.

Furthermore, the idea that small video providers should be treated the same as large video providers is undermined by the fact that AT&T and Verizon received separate and distinct build-out requirements. In other words, not even the large video providers operate under uniform build-out requirements. Therefore, it is completely unsupported to assume that uniform build-out standards should be a goal of this rulemaking, especially as such a policy is outside the scope of the Commission's delegated authority under DIVCA.

It is also completely contrary to DIVCA to apply more onerous regulatory procedures to small video providers than were contemplated for large video providers. Accordingly, when DRA suggests that small video providers should be subject to a public hearing process in the event they cannot meet a particular safe harbor,<sup>1</sup> the Commission should reject such suggestion. Video providers are not public utilities, and DRA's proposal presumes a level of regulatory oversight for smaller video providers that is inconsistent with the non-public utility status of video providers. STV agrees with the statement in AT&T's opening comments citing to Section 5840 (a) that the Commission may not impose any requirement upon any holder of a state franchise, "except as expressly provided in [DIVCA]." See AT&T Opening Comments, p. 2. With regard to both the build-out proposals and the proposal for meeting a low-income penetration level for smaller providers, STV requests that the Commission pay particular heed to the limits of its authority and discretion under DIVCA.

In its opening comments, STV proposed a modest revision to the PD that would add a year or two to the build-out requirements applied to AT&T and Verizon and to rely on the resulting build-out periods as safe harbors for small video providers. STV's proposal reflects DIVCA's intent to provide small video providers with more flexibility in their system build-outs, but maintains a build-out framework similar to the larger companies. Furthermore, DIVCA did not apply specific low-income build-out requirements to small video providers, and the Commission should modify the PD to eliminate the application of Section 5890(b) requirements to small video providers.

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<sup>1</sup> See DRA Opening Comments, p. 3.

### **III. ANY REPORTING REQUIREMENTS MUST BE BASED ON AN EXPLICIT PROVISION IN DIVCA.**

Several commenting parties urge the Commission to adopt more rigorous reporting requirements than contemplated under DIVCA. *See, e.g.,* TURN Opening Comments, pp. 2-4; Greenlining Opening Comments, pp. 3-5. The Commission should reject these proposals. As even the PD has recognized, DIVCA grants to the Commission only a very limited scope of authority relative to the regulation of video providers. If DIVCA has not specified a particular reporting requirement, then the Commission should not adopt it. The reporting requirements proposed by consumer groups exceed the provisions of DIVCA and should not be adopted.

STV also objects to CCTA's proposal to exempt incumbent cable providers from any reporting requirement established by the Commission, which is effectively what would occur under CCTA's proposal. *See* CCTA Opening Comments, pp. 4-5. It would be competitively unfair to require new entrants to comply with a particular reporting requirement while exempting incumbent video providers from the same requirement. Accordingly, the Commission should reject CCTA's proposal.

Finally, STV concurs with the concerns expressed by AT&T and Verizon regarding reporting requirements that exceed the explicit mandates of DIVCA. To the extent there is no explicit statutory authorization for a reporting requirement in the PD, the Commission should modify the PD to eliminate that reporting requirement.

#### **IV. CONCLUSION.**

Based on the foregoing, the Commission should eliminate the build-out application requirement embraced by the PD and reflected in Section VI.B.1.(3) of General Order 169. The Commission should also set safe harbor build-out benchmarks for small video providers at one to two years longer than those found in Section 5890(e) and should not apply the Section 5890(b) requirements to smaller providers. Finally, the Commission should reject any additional reporting requirements, because they are inconsistent with the authority provided to the Commission under DIVCA.

Dated this 18th day of September, 2007, at San Francisco, California.

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CERTIFICATE OF SERVICE

I, Noel Gielegthem, declare:

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is COOPER, WHITE & COOPER LLP, 201 California Street, 17<sup>th</sup> Floor, San Francisco, CA 94111.

On September 18, 2007, I served the

REPLY COMMENTS OF

OF SUREWEST TELEVIDEO (U 6324 C)

ON PROPOSED DECISION MAILED AUGUST 24, 2007

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Hard copies were served via U.S. Mail on the two parties on the service list who did not provide an e-mail address. Hard copies were also mailed Assigned ALJ Kotz and to Jane Whang, Advisor to Assigned Commissioner Chong.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 18, 2007, at San Francisco, California.

  
Noel Gielegthem

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